



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Alektronics, Inc.

File: B-261431

Date: September 22, 1995

Alan C. Eakle for the protester.

Jeffery B. Greer, Esq., Defense Logistics Agency, for the agency.

Paula A. Williams, Esq., and Susan K. McAuliffe, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Sole-source award of a critical military item was reasonable where there is a critical inventory shortage and the awardee is the only approved source that has successfully manufactured the item and is capable of satisfying the agency's urgent need.

DECISION

Alektronics, Inc. protests the sole-source award of a contract to Randtron Systems, Inc., under request for proposals (RFP) No. SP0970-94-R-0085, issued by Defense Logistics Agency (DLA), Defense Electronics Supply Center, for a quantity of antennas for the F-15 aircraft. Alektronics alleges that DLA improperly denied it an opportunity to compete for this urgent requirement.

We deny the protest.

The antennas, national stock number (NSN) 5985-01-235-5118, are used primarily on the F-15 aircraft and other weapons systems. They are classified as critical application items which can only be purchased from approved sources; each source had to possess a security clearance from the Defense Investigative Service (DIS) for its facility and personnel because acceptance testing of this particular antenna requires access to classified data.

As noted in the Commerce Business Daily (CBD) synopsis of the procurement published on March 3, 1994, DLA did not have a technical data package available to permit full and open competition; therefore, the CBD synopsis and the RFP, issued on March 30, indicated that award would be restricted to approved sources. At the

time the solicitation was issued, Randtron, the original equipment manufacturer (OEM), was the only approved source for this particular antenna. The RFP also contained DLA's "Products Offered" clause, which permits firms to submit proposals for alternate products not manufactured by the OEM.

Of the 27 firms solicited, Randtron, the approved source, and Alektronics and Circle Prime, two unapproved sources, submitted proposals by the extended June 8 closing date. The agency submitted the data received from the two unapproved sources to the Engineering Support Activity (ESA) at Warner-Robins Air Force Base which has engineering responsibility for this item. ESA began a source approval evaluation on or about June 28, and while this process was underway, Alektronics submitted a proposed acceptance test procedure which it had prepared without the classified data for review. Along with that submission, Alektronics advised the agency that in the event it did not obtain the required security clearance by the time of award, acceptance testing could be performed by another government contractor having the required clearance with which it had contracted. The ESA completed its evaluation of the protester's alternate product and acceptance test procedures on February 2, 1995; it found Alektronics's antenna "acceptable on condition." This conditional approval was based on the protester's obtaining a security clearance from DIS; moreover, the ESA recommended that the requirement be awarded only to a contractor with a fully cleared facility and personnel.¹

Meanwhile, the record shows that the inventory for these antennas had become critically low and the agency subsequently made a determination that 200 antennas should be procured on an urgent basis. DLA obtained a new quote from Randtron and made award to that firm on April 10, 1995.² Alektronics does not dispute that the agency had an urgent need for the item. The protester contends only that it should have been solicited for the quantity awarded to Randtron because it was a significantly lower-priced alternate source.

¹The agency reports that on March 16, 1995, it issued a purchase order for 15 antennas to Alektronics to give the firm an opportunity to manufacture the items with delivery due 120 days after receipt of order, that is, by July 14, 1995. Upon delivery, the protester would be required to demonstrate that its product meets the design and performance requirements at final testing.

²The agency executed a justification and approval authorizing the sole-source award to Randtron on the basis of urgency on September 18, 1995, after the protest was filed.

Under the Competition in Contracting Act of 1984 (CICA), an agency may use other than competitive procedures to procure goods or services where the agency's requirements are of such an unusual and compelling urgency that the government would be seriously injured if the agency was not permitted to limit the number of sources from which it seeks bids or proposals. 10 U.S.C. § 2304(c)(2) (1994). This authority is limited by the requirement of 10 U.S.C. § 2304(e) that agencies seek offers from as many potential sources as is practicable under the circumstances. An agency has the authority under 10 U.S.C. § 2304 (c)(2) to limit the procurement to the only firm it reasonably believes can perform the work properly within the available time; we will object to the agency's determination only where the decision lacks a reasonable basis. Greenbrier Indus., Inc., B-241304, Jan. 30, 1991, 91-1 CPD ¶ 92. In this regard, when the military advises that there is a critical need for a key component of a weapon system, we will accept the need for avoiding delay in replenishing that inventory as the basis for an urgent and compelling noncompetitive award. See, e.g., Logics, Inc., B-256171, May 19, 1994, 94-1 CPD ¶ 314.

Here, the record shows that only approved sources could qualify for award. The record further shows when the award was made to Randtron on April 10, Alektronics was not an approved source because the firm did not possess the required security clearance to obtain access to classified drawings which were needed to demonstrate that the alternate items offered by the protester would meet the necessary design and performance requirements. While the protester points to an agreement it had for the acceptance testing to be performed at another contractor's facility which has the required security clearance, the agency decided that such an arrangement was not in the government's best interest. Since it is logical for the agency to want to be able to discuss any testing problems and other contract compliance issues directly with its contractor, we see nothing unreasonable with the agency's position. Therefore, we have no basis for viewing the award to Randtron, the sole approved source, as improper.

Finally, Alektronics alleges that DLA impermissibly delayed its efforts to obtain a security clearance as the agency did not provide proper instructions on how to start the security review process. While the parties disagree as to the reason for the delay in requesting a security clearance for Alektronics's personnel and facility, the record does indicate that by letter dated March 9, the contracting officer formally requested that DIS undertake a security review of the firm. In this regard, the agency reports that DIS anticipated that this review could be completed in approximately 90 days since Alektronics's personnel did not already possess

security clearances. We see nothing in the record which indicated that the security review process was not promptly initiated by the contracting officer after ESA completed the evaluation of the protester's product on February 2.

The protest is denied.

/s/ Ronald Berger
for Robert P. Murphy
General Counsel